

§ 488.815 Factors to be considered in selecting sanctions.

CMS bases its choice of sanction or sanctions on consideration of one or more factors that include, but are not limited to, the following:

- (a) The extent to which the deficiencies pose immediate jeopardy to patient health and safety.
- (b) The nature, incidence, manner, degree, and duration of the deficiencies or noncompliance.
- (c) The presence of repeat deficiencies, the HHA's overall compliance history and any history of repeat deficiencies at either the parent or branch location.
- (d) The extent to which the deficiencies are directly related to a failure to provide quality patient care.
- (e) The extent to which the HHA is part of a larger organization with performance problems.
- (f) An indication of any system-wide failure to provide quality care.

§ 488.820 Available sanctions.

In addition to termination of the provider agreement, the following alternative sanctions are available:

- (a) Civil money penalties.
- (b) Suspension of payment for all new admissions.
- (c) Temporary management of the HHA.
- (d) Directed plan of correction, as set out at § 488.850.
- (e) Directed in-service training, as set out at § 488.855.

§ 488.825 Action when deficiencies pose immediate jeopardy.

(a) *Immediate jeopardy.* If there is immediate jeopardy to the HHA's patient health or safety—

- (1) CMS immediately terminates the HHA provider agreement in accordance with § 489.53 of this chapter.
- (2) CMS terminates the HHA provider agreement no later than 23 days from the last day of the survey, if the immediate jeopardy has not been removed by the HHA.
- (3) In addition to a termination, CMS may impose one or more alternative sanctions, as appropriate.
- (b) *2-day notice.* Except for civil money penalties, for all sanctions specified in § 488.820 that are imposed when

there is immediate jeopardy, notice must be given at least 2 calendar days before the effective date of the enforcement action.

(c) *Transfer of care.* An HHA, if its provider agreement terminated, is responsible for providing information, assistance, and arrangements necessary for the proper and safe transfer of patients to another local HHA within 30 days of termination. The State must assist the HHA in the safe and orderly transfer of care and services for the patients to another local HHA.

§ 488.830 Action when deficiencies are at the condition-level but do not pose immediate jeopardy.

(a) *Noncompliance.* If the HHA is no longer in compliance with the conditions of participation, either because the deficiency or deficiencies substantially limit the provider's capacity to furnish adequate care but do not pose immediate jeopardy, have a condition-level deficiency or deficiencies that do not pose immediate jeopardy, or because the HHA has repeat noncompliance that results in a condition-level deficiency based on the HHA's failure to correct and sustain compliance, CMS will:

- (1) Terminate the HHA's provider agreement; or
- (2) Impose one or more alternative sanctions set forth in § 488.820(a) through (f) of this part as an alternative to termination, for a period not to exceed 6 months.

(b) *15-day notice.* Except for civil money penalties, for all sanctions specified in § 488.820 imposed when there is no immediate jeopardy, notice must be given at least 15 calendar days before the effective date of the enforcement action. The requirements of the notice are set forth in § 488.810(f) of this part.

(c) *Not meeting criteria for continuation of payment.* If an HHA does not meet the criteria for continuation of payment under § 488.860(a) of this part, CMS will terminate the HHA's provider agreement in accordance with § 488.865 of this part.

(d) *Termination time frame when there is no immediate jeopardy.* CMS terminates an HHA within 6 months of the last day of the survey, if the HHA is not in compliance with the conditions